

EXHIBIT 33

IN THE U.S. DISTRICT COURT FOR MARYLAND,
SOUTHERN DIVISION

+ + + + +

IN THE MATTER OF:

BEYOND SYSTEMS, INC.

Case No.

PJM 08 cv 0921

Plaintiff,

v.

WORLD AVENUE USA, LLC

Defendants

Wednesday,
September 29, 2010
Pompano Beach, Florida

DEPOSITION OF:

ERIC L. SANTELICES

called for examination by Counsel for the
Plaintiff, pursuant to Notice of Deposition,
in the Mumbai Conference Room of the Forum

Hotel, located at 600 SW Third Street, when
were present on behalf of the respective
parties.

Reporter: Chad Jackson

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APPEARANCES:

On Behalf of the Plaintiff, Beyond
Systems, Inc.

Of: STEPHEN H. RING, ESQ.
Stephen H. Ring, PC
506 Main Street
Suite 215
Gaithersburg, MD 20878
301-563-9249
301-563-9639 fax
shr@ringlaw.us

Of: MICHAEL S. ROTHMAN, ESQ.
Law Office of Michael Rothman
401 East Jefferson Street
Suite 201
Rockville, MD 20850
301-251-9660
301-251-9610 fax
mike@mikerothman.com
On Behalf of the Defendant, World Avenue
USA:

SANFORD M. SAUNDERS, JR., ESQ.

Of: Greenberg Traurig, LLP
2101 L Street, N.W.
Suite 1000
Washington, D.C. 20037
202-331-3130
202-261-0150 fax
saunderss@gtlaw.com

Of: KENNETH HORKY, ESQ.
Greenberg Taurig, LLP
401 East Las Olas Boulevard
Suite 2000
Fort Lauderdale, FL 33301
954-765-0500

954-765-1477 fax
horkyk@gtlaw.com

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ALSO PRESENT:

CHADD SCHLOTTER

PAUL WAGNER

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WITNESS	DIRECT	CROSS	REDIRECT
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1 P-R-O-C-E-E-D-I-N-G-S

2 10:44 a.m.

3 Whereupon,

4 ERIC LOUIS SANTELICES

5 was called for examination by Counsel, having
6 been first duly sworn, assumed with the
7 witness stand, was examined and testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. RING:

11 Q Please state your full name.

12 A Eric Louis Santelices.

13 Q Mr. Santelices, my name is Steve

14 Ring. I'm an attorney. I'm here with Michael
15 Rothman as co-Counsel, and we represent Beyond
16 Systems, Inc., which is the Plaintiff in this
17 lawsuit, and Paul Wagner is also here. He is
18 the President of BSI, and I'll be asking you
19 a series of questions.

20 If any of the questions I ask you
21 are unclear, please tell me so, and I'll try
22 to either rephrase or repeat the question. Is

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1 that okay with you, so far?

2 A Yes.

3 Q Okay, if you need to take a break

4 for any reason, please let me know and we'll

5 take a break, on reasonable notice and the

6 only thing is, if a question is pending, we

7 probably won't take a break until we get an

8 answer first, okay?

9 A Okay.

10 Q All right, and let's see, you need

11 to state your answers verbally, as you have

12 been so far, because head nods or colloquial

13 gestures that we often use causally, don't

14 carry through to the record and everything is

15 being recorded here today. Is that okay with

16 you, too?

17 A Okay.

18 Q All right, where are you employed

19 presently?

20 A 3C Interactive.

21 Q How long have you been there?

22 A I'm coming up on one year.

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1 Q And what do you do for them?

2 A Director of Information

3 Technology.

4 Q And where did you work before

5 that?

6 A World Avenue.

7 Q And how long did you work for

8 them?

9 A I'd say it's about a year and

10 seven, eight, nine months, somewhere in that

11 range, just under two years.

12 Q Okay, and what position or

13 positions did you hold with them?

14 A Senior System Administrator.

15 Q Same position the whole time?

16 A Yes.

17 Q And what were your duties there,

18 as Senior System Administrator?

19 A A variety of duties, primarily,

20 the -- my primary duty was to architect,

21 build and -- or architect, design and build

22 the next generation platform, I guess, for a

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1 project called Warwick.

2 Q And what was that project?

3 A It was a cloud-computing project,

4 to use industry buzz-words. The goal of it

5 was to have an elastic and dynamic environment

6 to host applications and be able to changed,

7 based on work load.

8 Q What kind of applications?

9 A The specific applications that --

10 it was going to be open -- well, the plans

11 were that it was going to be open for

12 developers, was my understanding. But the

13 initial applications that World Avenue was

14 concerned with were related to the advertising

15 business that they were in.

16 Q And what did you understand that

17 advertising business to be?

18 A My understanding was that they

19 operated a reg path, and the definition that

20 I have for reg path was a series of

21 advertisements that would be displayed to a

22 consumer, or to someone who is going through

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1 this path, and the ultimate goal was to obtain

2 some reward at the end, which was in the form

3 of a free gift, of some sort.

4 Q Okay, and did you have occasion to

5 view the reg path that you've talked about?

6 A I've never -- specifically, I've

7 never seen the entire path. I've only looked

8 at bits and pieces of this reg path.

9 One of my duties was also, later

10 on, in my time at World Avenue, was to assist

11 the network operations center, or the NOC,

12 which they provided monitoring of the

13 environment.

14 So, when there were problems with

15 one of the advertisers' ads, displaying or

16 something wasn't working right, we'd have to

17 go and troubleshoot the different portions of

18 that.

19 Q Okay. Now, what do you mean by

20 trouble with an advertisers' ad displaying?

21 What is an advertisers' ad?

22 A I can't think of any off the top

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1 MR. SAUNDERS: Objection, as to
2 form. Go ahead and answer.
3 A No.
4 BY MR. RING:
5 Q Did you have any way of different-
6 iating among which ones applied to which
7 websites?
8 A No.
9 Q When you answered my question
10 earlier, about handling web pages, were those
11 landing pages?
12 A In the context we were talking
13 previously, I was -- what came to my mind was
14 pages regarding like, the World Avenue
15 website. You asked the question in the
16 context regarding other companies websites.
17 Q Okay, are you familiar with the
18 term landing page?
19 A I have heard that term, yes.
20 Q And what do you understand it to
21 mean?
22 A An entry point into the reg path.

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1 Q Did your work take you to landing
2 pages?
3 A No.
4 Q Did your work take you to links to
5 landing pages?
6 A No.
7 Q Did you differentiate among the
8 600 domain names, by any category, whether by
9 function, ownership or otherwise?
10 A No.
11 MR. SAUNDERS: Objection, as to
12 form. Go ahead and answer.
13 A Okay, no.
14 BY MR. RING:
15 Q Thank you. No further questions.
16 Appreciate your time.
17 A Okay.
18 MR. SAUNDERS: We'll take a break
19 and we'll decide whether we have any
20 questions.
21 (Whereupon, the above-entitled
22 matter went off the record at approximately

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1 11:45 a.m. and resumed at approximately 11:50
2 a.m.)
3 CROSS EXAMINATION
4 BY MR. SAUNDERS:
5 Q Back on the record. Mr.
6 Santelices, you're recall that Mr. Ring asked
7 you some questions about the reg path, earlier
8 in your deposition?
9 A Yes.
10 Q Okay, while you were working at
11 World Avenue, which company was responsible
12 for the content of the reg path?
13 A It's my understanding it was the
14 Useful.
15 Q Okay, thank you. Pass the
16 witness.
17 RE-DIRECT EXAMINATION
18 BY MR. RING:
19 Q Mr. Santelices, you took a break
20 and spoke with Counsel, just a minute ago.
21 How many times have you spoken with any
22 attorney for -- or with Greenberg Taurig,

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1 within the last week?
2 A Once, prior to today.
3 Q Okay, when was that?
4 A Last Friday.
5 Q And today, during the break, it
6 was just -- just ended minutes ago, you also
7 spoke with Counsel again, is that correct?
8 A Correct.
9 Q And you spoke with me, prior to
10 today, as well, is that correct?
11 A That's correct.
12 Q Did anything I said to you, in any
13 way, alter your testimony here today?
14 A No.
15 Q Okay, and how is it that you now
16 know that the Useful was the company behind
17 the content? Were you reminded of that fact,
18 in some fashion, or what?
19 MR. SAUNDERS: I'm going to object
20 to the form of the question, and let the
21 witness go ahead and answer it.
22 A No, I was not reminded of that.

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1 It was -- it wasn't in your question, it
2 wasn't clear, what your question was, of who
3 operated the reg path, from a business
4 perspective. You asked who operated the
5 servers, and we were talking about the systems
6 and the servers.

7 So, that's the context that I was
8 using.

9 Q Okay, when you worked at World
10 Avenue, were you aware of the name, the
11 Useful?

12 A Yes.

13 Q How did you become aware of it?

14 A It was during my training.

15 Q Did you know whether the word the
16 Useful applied to a separate corporate entity,
17 or was it just a trade name?

18 A I don't recall, whether it was
19 used as a trade name or a separate entity.

20 Q Okay, did you ever see the name,
21 the Useful, LLC, displayed either in a logo or
22 on the wall or on stationary?

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1 Useful?

2 A System administration.

3 Q Did you do work for World Avenue,
4 USA, LLC?

5 A I'm hesitating, because we had a
6 form that we would fill out every month, that
7 showed a percentage of time that we dedicated
8 to each one of our companies, or projects, if
9 you want to call it that.

10 So, I don't remember if there was
11 a World Avenue, USA on that form.

12 Q What did you call that form?

13 A Time tracking form.

14 Q Did it identify the Useful, World
15 Avenue and other names like that?

16 A Yes.

17 Q What did that form look like?

18 First of all, was it in paper? Was it
19 electronic or what?

20 A It was a simple Excel spreadsheet,
21 and it had company names on the left and
22 percentages -- or columns on the right, to

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1 A Yes.

2 Q You did?

3 A Yes.

4 Q Okay, when did you see that?

5 A I've seen it on purchase orders.
6 I've seen it on logos. After the acquisition
7 of Kitara, we had kind of an all-hands
8 meeting, and some of the logos of the
9 companies that were owned by Niuniu were
10 displayed.

11 Q Did you ever learn of the name
12 World Avenue USA, LLC --

13 A I have seen --

14 Q -- while you worked there?

15 A I have seen that name.

16 Q Okay, was that displayed in the
17 same context you just described?

18 A Yes.

19 Q Thank you. Bear with me a second.
20 Did you do work for the Useful, LLC?

21 A Yes.

22 Q What work did you do for the

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1 allocate time against.

2 Q And did you personally fill it out
3 for yourself?

4 A Yes.

5 Q Who was to say whether you
6 accurately tracked or recorded what you --
7 what time you spent on what project? Was that
8 an honor system?

9 A Yes.

10 Q Were you the only one to submit
11 those forms, or did other people submit them,
12 also?

13 A It was my understanding that
14 everybody was responsible to submit them.

15 Q Who did you submit those forms to?

16 A Generally, it was accounting.

17 Q And I understand the form was an
18 Excel form -- format, and when you submitted
19 it to accounting, then do you know what means
20 was used to freeze or lock-in your reporting?

21 MR. SAUNDERS: Objection, as to
22 form. Go ahead and answer, if you can.